

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Daniel Leiva v. Administrative Review Board, United States Department of Labor

No. 19-60524, United States Court of Appeals for the Fifth Circuit (April 29, 2020)

SUMMARY

The Fifth Circuit denied a petition for review of an Administrative Review Board (ARB) decision that a railroad's failure to expunge a prior disciplinary incident from an employee's file, as required by a settlement agreement, did not constitute a new retaliation claim under the Federal Railroad Safety Act (FRSA). The court held that the employee failed to prove by a preponderance of the evidence that his protected activity was a contributing factor in the later disclosure of the incident, rejecting a "cat's paw" theory of causation where no evidence showed a retaliatory actor influenced the decisionmaker. The court applied arbitrary and capricious review to the ARB's factual findings and de novo review to legal conclusions, affirming that the ARB's decision was not contrary to law.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Carl E. Stewart; James L. Dennis; Catharina Haynes
JURISDICTION	Federal
DECIDED	April 29, 2020
DOCKET	19-60524
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of a decision of the Administrative Review Board of the United States Department of Labor.
STANDARD OF REVIEW	The ARB's decision is sustained unless 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' 5 U.S.C. § 706(2)(A). Legal conclusions are reviewed de novo; factual conclusions under a 'substantial evidence standard.'
PRECEDENTIAL VALUE	Unpublished
PARTIES	Daniel Leiva v. Administrative Review Board, United States Department of Labor

TOPICS

administrative law

judicial review of agency action

retaliation

whistleblower

standard of review

PRACTICE AREAS

Administrative Law

Employment Law

Railroad Safety

QUESTIONS PRESENTED

1. Whether Union Pacific's failure to expunge the July 2012 incident and its submission in a later administrative proceeding constituted a new violation of the Federal Railroad Safety Act.
2. Whether Leiva's protected activity in July 2012 was a contributing factor to the August 2016 submission under a cat's paw theory of causation.

HOLDINGS

1. Leiva has not shown by a preponderance of the evidence that his July 2012 protected activity was a contributing factor in the decision to submit his file to the administrative body in 2016.

KEY QUOTATIONS

"We will sustain the ARB's decision unless it was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' 5 U.S.C. § 706(2)(A)." (3)

"To succeed under a cat's paw theory, 'a plaintiff must establish that the person with a retaliatory motive somehow influenced the decisionmaker to take the retaliatory action. Put another way, a plaintiff must show that the person with retaliatory animus used the decisionmaker to bring about the intended retaliatory action.' Zamora v. City of Houston, 798 F.3d 326, 331 (5th Cir. 2015)." (3)

"Leiva has not shown by a preponderance of the evidence that his July 2012 protected activity was a 'contributing factor' in Powell's decision to submit his file to the administrative body in 2016." (4)

FACTUAL BACKGROUND

Leiva was a locomotive engineer for Union Pacific. In July 2012, after an altercation with a conductor, he reported the conductor's threats. Union Pacific suspended both employees. Leiva filed a FRSA complaint, leading to a settlement in 2015 requiring Union Pacific to expunge the July 2012 incident from its records. In 2014, Leiva was terminated for two safety violations. His union appealed the termination to another administrative body. In August 2016, a Union Pacific employee included Leiva's disciplinary history, containing the July 2012 incident, in a submission to that body. Leiva then filed a second FRSA complaint.

PROCEDURAL HISTORY

Leiva filed a FRSA complaint with OSHA after being suspended for reporting an altercation. An ALJ found Union Pacific violated the FRSA. The ARB affirmed and remanded for punitive damages. The parties settled, requiring Union Pacific to expunge the July 2012 incident. Leiva was later terminated for safety violations, and his union appealed. In that proceeding, Union Pacific submitted Leiva's disciplinary record including the July

2012 incident. Leiva filed another FRSA complaint. The ALJ held in his favor, but the ARB vacated, finding no new FRSA violation. Leiva petitioned for review.

DISPOSITION

other

CASES CITED

- Allen v. ARB, 514 F.3d 468 (5th Cir. 2008)
- Zamora v. City of Houston, 798 F.3d 326 (5th Cir. 2015)
- Staub v. Proctor Hosp., 562 U.S. 411 (2011)
- Klopfenstein v. PCC Flow Techs. Holdings, Inc., ARB Case No. 04–149, 2006 WL 3246904 (ARB May 31, 2006)